



STATEMENT OF

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BEFORE

**THE SUBCOMMITTEE ON TRANSPORTATION SECURITY AND INFRASTRUCTURE
PROTECTION**

**COMMITTEE ON HOMELAND SECURITY
U.S. HOUSE OF REPRESENTATIVES**

**SUBJECT: "The Next Step in Aviation Security — Cargo Security: Is
DHS Implementing the Requirements of the 9/11 Law
Effectively?"**

July 15, 2008

Chairwoman Jackson Lee and Ranking Member Lungren: On behalf of the National Customs Brokers and Forwarders Association of America (NCBFAA), I am pleased to have this opportunity to testify before you today on air cargo security. I am Cindy Allen of Argents Air Express, Ltd., of Romulus, Michigan and Chairwoman of the Security Task Force for NCBFAA. NCBFAA is the national organization representing customs brokers, ocean transportation intermediaries and Indirect Air Carriers (IAC). Very simply, an IAC is designated by a shipper to facilitate the movement of his goods by air.

We are directly regulated by the Transportation Security Administration (TSA), together with the air carriers, while our customers, the shippers, are not. We operate under a security plan the details of which cannot be shared with our customers because the program is considered Sensitive Security Information, or SSI. The air carriers to whom we tender cargo are also regulated by the TSA with their plan, the details of which they are not allowed to share with us. Thus, we are a very important cog in the transportation supply chain and positioned to have a highly positive role in our nation's fight against terrorism in the skies, through multiple, interdependent layers of security.

First, let me say a little about the industry. We are very closely aligned with our colleagues from the Air Forwarders Association, whose members tend towards domestic shipping while ours tend towards international transportation. While we have several large members who are household names, our largest segment of membership are medium and small, independently-owned businesses. While we book space aboard aircraft – both passenger aircraft and exclusively all cargo aircraft – we also assist in the movement of goods towards the airport: either by trucks owned by the IAC or contracting with independent cartage companies; picking up cargo at the shipper's location or receiving it at ours; and, either palletizing merchandise in our own facilities and/or moving merchandise directly to the airport to be built on airline pallets or placed in containers by the airline. If a member contracts with a trucking company to arrange transportation, that company is regulated under our own security program as what is called an "authorized representative." As such, our IAC members are responsible for the conduct of those companies and are liable for their actions, including potential civil and/or criminal violations in their conduct.

We need to say, at the start, that we strongly support TSA's Certified Cargo Screening Program and want to do our part in ensuring its success. We believe that it meets this committee's and Congress' intent in addressing the obligations required by the 9/11 law mandating 100% screening of cargo destined for passenger aircraft – 50% required by February 2009, and the remaining 50% required by August 2010. The screening must be completed at the piece level, meaning that pallets of cargo must be taken apart and their individual cartons screened.

The program recognizes that Indirect Air Carriers are force-multipliers in the twin tasks of establishing security and moving goods by air. Air cargo is selected as a transportation mode for essentially one reason – urgency. "Just-in-time" delivery has created the business imperative of moving merchandise more quickly to the point of sale, rather than absorbing the

expense of inventory and of positioning additional quantities of goods in warehouses. There are several commodities which are not suitable for other means of transportation, such as perishable food, flowers, medicine and medical response items. These are among the diverse mix of products handled daily by IACs and airlines. Collectively, we also move valuable or sensitive cargo for many government agencies such as Defense, Treasury and State that require urgent shipment and delivery. And, everyone knows now that they can remedy last-minute contingencies that can occur in business through a next-day delivery.

To create a security system that establishes one funnel and a likely bottle-neck at the airports -- whereby carriers are required to physically examine and then process packages under limiting conditions -- undermines the viability of air cargo delivery. The Certified Cargo Screening Program draws upon regulated entities -- Indirect Air Carriers -- to share this responsibility. An IAC must have its personnel thoroughly vetted by the TSA through their Security Threat Assessment program. This program mandates that all individuals with unescorted access to air cargo must be screened through a number of databases maintained by the federal government. An IAC's facilities must pass muster by meeting fixed physical security standards, which are constantly probed and tested by one of four hundred and fifty cargo inspectors that the TSA has in the field every day. Finally, each participating air forwarder must meet chain-of-custody standards in delivering screened merchandise to the air carrier. All of these activities take place under regulations promulgated and enforced by the Transportation Security Administration. It is a sensible way to manage security for the huge volumes of air cargo that inundate airports every day.

Yet our commitment to TSA and support of the Certified Cargo Screening Program does not mean that we are completely happy with how the agency is implementing its obligations under the law. Initial deployment of the program is being conducted as a pilot, performed in a number of US cities by a limited number of Indirect Air Carriers. In order to meet Congress' requirement of reaching 50% physical examination at the individual carton or piece level by next February, the agency has sought to entice the largest IACs to the pilot, to the exclusion of small and medium sized businesses who presumably have to be incorporated into the program in time to meet the goal of achieving 100% examination. While we understand TSA's responsibility to reach the screening percentages prescribed by the statute, this creates a number of problems for our industry.

To start with, the Certified Cargo Screening Program involves large capital outlays for screening equipment, costs which are well beyond the means of most businesses. Equipment that is used for screening of air cargo must be far more substantial than that required for screening passenger baggage. The size and complexity of packaging and palletizing requires greater sophistication and capacity -- and hence far greater cost. We estimate that outlays will require between \$150,000 to \$500,000 or more per facility.

It is unrealistic to assume that a typical IAC can afford this equipment for use in his own company, just as we understand it may be difficult for some of the larger participating

companies to do so. We clearly understand that all or most of the cost for screening equipment in the pilot program will be underwritten by TSA, with the equipment provided to those companies on a permanent basis, without clear restrictions on their ability to utilize that equipment in their favor in the commercial marketplace. Also of great concern is that with the deadlines rapidly approaching, TSA has not and does not foresee developing a list of eligible products from which to choose, but rather will provide a "Candidate Technology List". Further, we have no guarantees from the agency that should they identify another threat which cannot be detected by existing equipment, we will not be obliged to purchase an entirely new set of equipment at additional cost. You can understand why we approach this cautiously.

There appears to be no funding within TSA for like treatment for the small and medium sized businesses that will follow these large corporations into the program. We therefore start with a basic inequity. The TSA has determined that these large companies are needed in the pilot to meet the 50% federal requirement. To incentivize their participation, TSA will subsidize those companies and underwrite a major portion of their overhead. Small companies, all of whom have been excluded from the pilot, will receive no such benefit. Their sole option is to join the queue at the airport and await their turn for examination. This not only reduces their ability to put cargo on aircraft expeditiously but adds one more cost to each shipment for both the IAC and their customers – the small and medium-sized exporters who are at the heart of our economy. Smaller participants in the TSA program will see their ability to compete on a one-to-one basis diminish even further. This creates a huge competitive disadvantage in an industry where two of the key differentiators of service between companies are time-in-transit and cost.

NCBFAA surveyed its membership and received over 70 responses from its individual IAC companies. Asked how many offices IACs would equip with the necessary screening equipment and assume other operations costs, 58.3% said that they would not do so. Another 31% said that they would only equip a very few offices. This may have the undesired effect of shifting the points where air cargo is tendered to mirror the locations where cargo is screened. This is important as it would certainly increase the traffic and infrastructure demands of those already burdened major freight hubs, would affect the profitability of those airlines servicing small locations, and perhaps eventually limit passenger flight availability in those small markets.

In her letter of May 1, 2008 to TSA Administrator Kip Hawley, House Small Business Committee Chairwoman Nydia Velazquez said that "the net effect of this plan could place small firms who cannot reach the volume levels required of pilot participants on an unlevel playing field," concluding that "TSA should restructure the program in a manner which does not place small businesses at a disadvantage."

In approaching a solution, instead of looking backward at the present pilot, NCBFAA is inclined to look ahead to the time when small and medium-sized companies will be incorporated into the Certified Cargo Screening Program and are part of the final 50% necessary to achieve the 9/11 law's 100% mandate. First, TSA needs to provide the requisite funding to enable that participation. Presently, there is no funding projected, nor available for this purpose. We

strongly urge the Congress to look ahead to the FY2010 budget -- which will begin to take shape this fall -- and authorize and appropriate funding for this purpose.

The Association recognizes however that there needs to be creativity to this solution, creativity that reduces its cost. We recommend what we refer to as the "car wash" solution: establish one or several centralized locations in a specific geographic area where the community's IACs can take their cargo for screening. Some will favor a co-op approach. Others, such as warehousemen or individual IACs, may prefer to establish their own and provide services to the community on a fee basis. This procedure has been effective and efficiently used in similar circumstances for other governmental, security-related requirements in the CBP Carrier Initiative and C-TPAT programs. Additionally, we have experienced comparable results from Centralized Examination Sites (CES) nationwide for over 15 years. The concept can work if given an opportunity and we understand that TSA is exploring this option. In all events, however, the cost must be low enough to enable small and medium sized companies to compete against those who have a built-in advantage by virtue of the TSA pilot.

Chairwoman Jackson Lee and Ranking Member Lungren, NCBFAA Indirect Air Carriers respect the 9/11 law. You have met, over time, with a large community of our members from the Houston area and know their commitment to the nation's security. We support Congress' mandate and we support the Transportation Security Administration's Certified Cargo Screening Program. Adjustments however need to be made to ensure that goods flow freely yet securely through the airports and aboard passenger aircraft, while permitting those within our industry to compete for business. We think that your committee is the starting point for achieving this balance and we look forward to working with you in search of solutions.

Thank you for your kind attention to our views.